

MONTANA LEGISLATIVE HISTORY

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Chapter 542 19 83

Bill H 193 S \_\_\_\_\_ Original bill & history \_\_\_\_C

H. Committee on Local Govt

Hearing Date(s) Jan 20 ✓C

Jan 25 ✓C

\_\_\_\_\_C

\_\_\_\_\_C

Date Out \_\_\_\_\_C

S. Committee on Local Govt

Hearing Date(s) Mar 17 ✓C

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Did this bill originate in an interim committee? \_\_\_\_Yes \_\_\_\_No

Committee \_\_\_\_\_

Report \_\_\_\_\_

Senate Business and Industry

Mar 25

CONFERENCE COMMITTEE APPOINTED: 04/04/83  
CONFERENCE COMMITTEE DISSOLVED: 4/13/83

FREE CONFERENCE COMMITTEE APPOINTED: 4/13/83

FREE CONFERENCE COMMITTEE REPORT: 4/13/83  
HOUSE

2ND READING: 04/14/83, ADOPTED AYES: 89; NAYS: 0  
3RD READING: 04/15/83, ADOPTED AYES: 96; NAYS: 0

SENATE

2ND READING: 04/16/83, BE ADOPTED AYES: 48; NAYS: 0  
3RD READING: 04/18/83, BE ADOPTED AYES: 50; NAYS: 0

TRANSMITTED TO GOVERNOR: 04/21/83  
SIGNED: 4/25/83, CHAPTER 613

HB 192 -- SCHULTZ, KEYSER, WINSLOW, ET AL. -- TO PROHIBIT A SCHOOL DISTRICT FROM EMPLOYING A TEACHER WHO IS UNDER CONTRACT TO TEACH IN ANOTHER MONTANA SCHOOL DISTRICT, AMENDING SECTION ....

INTRODUCED: 01/13/83  
REFERRED TO COMMITTEE ON EDUCATION & CULTURAL RESOURCES: 01/13/83  
HEARING: 1/24/83  
REPORT: 01/24/83, DO PASS  
2ND READING: 1/26/83, DO PASS AYES: 85; NAYS: 11  
3RD READING: 1/28/83, DO PASS AYES: 78; NAYS: 13

TRANSMITTED TO SENATE: 1/28/83  
REFERRED TO COMMITTEE ON EDUCATION & CULTURAL RESOURCES: 01/29/83  
HEARING: 3/2/83  
REPORT: 03/17/83, BE NOT CONCURRED IN. REPORT ADOPTED.  
BILL KILLED

HB 193 -- PISTORIA, MANNING, MCCORMICK -- DELINEATING SPECIFIC PROFESSIONS EXCLUDED FROM MUNICIPAL CONTRACT RESTRICTIONS; AMENDING SECTION ...; AND PROVIDING AN EFFECTIVE DATE.

INTRODUCED: 01/13/83  
REFERRED TO COMMITTEE ON LOCAL GOVERNMENT: 01/13/83  
HEARING: 1/20/83  
REPORT: 1/26/83, DO PASS, AS AMENDED  
2ND READING: 01/28/83, DO PASS AYES: 68; NAYS: 23  
3RD READING: 01/31/83, DO PASS AYES: 59; NAYS: 37

TRANSMITTED TO SENATE: 1/31/83  
REFERRED TO COMMITTEE ON LOCAL GOVERNMENT: 02/01/83  
HEARING: 3/17/83  
REPORT: 03/19/83, BE CONCURRED IN  
2ND READING: 03/22/83 AYES: 49; NAYS: 0  
ON MOTION, 3/23/83, THAT THE BILL BE TAKEN FROM 3RD READING AND REREFERRED TO 2ND READING. MOTION PASSED UNANIMOUSLY.  
ON MOTION, 3/24/83, THAT PASS CONSIDERATION OF THE BILL BE GIVEN ON 2ND READING THIS DATE. MOTION PASSED UNANIMOUSLY.  
ON MOTION, 3/24/83, THAT THE BILL BE REREFERRED TO THE COMMITTEE ON BUSINESS AND INDUSTRY. MOTION PASSED UNANIMOUSLY.  
REPORT: 03/25/83, BE CONCURRED IN

2ND READING: 03/26/83, BE CONCURRED IN AYES: 21; NAYS: 23  
2ND READING: 03/26/83, BE INDEFINITELY POSTPONED AYES: 23; NAYS: 22

RETURNED TO HOUSE 3/26/83

ON MOTION, 3/28/83, THAT THE SENATE RECONSIDER THEIR ACTION OF 3/26/83 AND PLACE THE BILL BACK ON 2ND READING. MOTION PASSED.

ON MOTION, 3/28/83, THE HOUSE ACCEDED TO THE REQUEST OF THE SENATE AND RETURNED THE BILL FOR FURTHER CONSIDERATION.

RETURNED TO SENATE: 03/28/83  
2ND READING: 03/29/83, BE CONCURRED IN, AS AMENDED AYES: 48; NAYS: 0  
3RD READING: 3/30/83 AYES: 49; NAYS: 0

RETURNED TO HOUSE WITH AMENDMENTS: 3/30/83  
2ND READING: 04/01/83, BE CONCURRED IN AYES: 86; NAYS: 0  
3RD READING: 04/04/83, BE CONCURRED IN AYES: 95; NAYS: 0

TRANSMITTED TO GOVERNOR: 04/13/83  
SIGNED: 04/18/83, CHAPTER 542

194 -- SWIFT, MUELLER, HANNAH, ET AL. -- TO SUBMIT TO THE QUALIFIED ELECTORS OF MONTANA AT THE NOVEMBER 6, 1984, ELECTION AN AMENDMENT TO ARTICLE II, SECTION 14, OF THE MONTANA CONSTITUTION RAISING FROM 19 TO 21 THE MAXIMUM AGE THAT MAY BE ESTABLISHED BY THE LEGISLATURE OR THE PEOPLE BY INITIATIVE FOR CONSUMING OR POSSESSING ALCOHOLIC BEVERAGES; AND PROVIDING AN EFFECTIVE DATE.

INTRODUCED: 01/13/83  
REFERRED TO COMMITTEE ON JUDICIARY: 01/13/83  
HEARING: 1/25/83  
REPORT: 02/15/83, DO PASS  
2ND READING: 02/17/83, DO PASS AYES: 51; NAYS: 46  
3RD READING: 02/19/83, DO PASS AYES: 55; NAYS: 44

TRANSMITTED TO SENATE: 2/19/83  
REFERRED TO COMMITTEE ON JUDICIARY: 02/21/83  
HEARING: 3/9/83  
REPORT: 3/10/83, BE CONCURRED IN  
2ND READING: 03/12/83, BE CONCURRED IN, AS AMENDED, AYES: 31; NAYS: 11  
3RD READING: 03/15/83 AYES: 37; NAYS: 11

RETURNED TO HOUSE WITH AMENDMENTS: 3/15/83  
2ND READING: 03/30/83, BE NOT CONCURRED IN AYES: 55; NAYS: 39

CONFERENCE COMMITTEE APPOINTED: 03/30/83  
DIED IN CONFERENCE COMMITTEE

195 -- SWIFT, MUELLER, HANNAH, ET AL. -- TO RAISE FROM 19 TO 21 THE LEGAL AGE AT WHICH PERSONS MAY POSSESS, CONSUME, OR BE SOLD OR OTHERWISE GIVEN ALCOHOLIC BEVERAGES; AMENDING SECTIONS ....; PROVIDING A CONTINGENT EFFECTIVE DATE; AND PROVIDING THAT THE PROPOSED ACT BE SUBMITTED TO THE ELECTORS OF THE STATE OF MONTANA AT THE NOVEMBER 6, 1984 GENERAL ELECTION.

INTRODUCED: 01/13/83  
REFERRED TO COMMITTEE ON JUDICIARY: 01/13/83  
HEARING: 1/25/83

CHIP EDMONDS, Montana School Board Association, supports passage of this bill.

DAVID W. WILCOX, City of Missoula, also strongly supports this bill.

BILL VERWOLF, City of Helena, supports this bill for the same reasons that have already been stated. The limitation would not prevent high interest rates, but would prevent issuance of bonds when interest rates go higher. The impact is that bonds for mandated improvements can't be issued now. One has to wait until the interest rates drop below the legal limit and construction costs continue to escalate, so you get into a trade-out situation. We feel this should become permanent legislation.

OPPONENTS: None.

SEN. MAZUREK closed.

QUESTIONS:

REP. HAND asked if we were going to cancel the situation--not just have another moratorium. SEN. MAZUREK replied that this is true. The ceilings are gone forever unless future legislation would be enacted.

REP. SALES asked what is included by the term "all issues?" GENE HUFFORD, D. A. Davidson, replied that this includes all of the bond sales reported to the Public Securities Association in the home office, all the sales that took place in the various states, including Montana, and the par amount of all those issues and the average net affecting interest rate of those issues.

The hearing was closed by CHAIRMAN McBRIDE.

HOUSE BILL 193. REP. PISTORIA, sponsor, stated that this bill amends municipal contracts and franchises. The present law (EXHIBIT 10) and an amendment by Sonny Hansen, (EXHIBIT 11) were passed out. REP. PISTORIA suggested deleting "professional and technical" and adding "medical, nursing, architectural, financial." On page 2 of the law you will note that any sum exceeding \$10,000 must be let out for bids. Referring to page 1 of the law, subsection (2) of 7-5-4301, all necessary contracts for professional, technical, engineering, and legal services are excluded from the provision of 7-5-4302. In 1982 a contract for \$1.2 million to run a sewer plant in Great Falls came under controversy. It was felt it could come

under "professionalism." "Professional" was not even mentioned in the contract; the description used was "maintenance." The amendment that Sonny Hansen passed out to you, following "financial," add "landscape architecture, land surveyors."

PROPOSERS: None

OPPOSERS:

DAVID WILCOX, City of Missoula, felt that the law as it previously read gave them the flexibility that they needed to contract for professional services. It does not help to eliminate professional and technical and add a list of what might be considered professional and technical because there are a whole host of other professionals that we might contract with. As a result of this legislation requiring a competitive bid, we would be faced with having to accept a bid from, possibly, an unqualified bidder who would not be able to do the best job we have laid out for him. An example would be obtaining an appraisal for a large piece of property. Appraising is certainly a profession and a very technical and complicated field. Even though we may get a competent appraiser, it may not be the most competent appraiser available for the money if we were forced to accept the bidding process. This law imposes a restriction on our flexibility to contract our services that we find somewhat unacceptable. We feel the solution to the problem might be to try to define in a broader sense "professional and technical" so as not to restrict their flexibility at the local level in contracting for the best available services at the lowest possible price as long as it is under \$10,000. He urged the Committee to vote against this legislation.

BILL VERWOLF, City of Helena, stated his concern is that the list proposed in the legislation says "architectural engineering." The amendment says "landscape architecture, land surveyors." That indicates there is going to be a more strict definition of these terms than we would like. One doesn't want the low bidder unless he happens to be the best. His concern was to make the list broad enough to include all kinds of professionals. We need more flexibility in this particular phrase.

ALEC HANSON, League of Cities and Towns, stated he is opposed to the bill for the same reasons cited by the cities of Helena and Missoula. He stated there is no reasonable way to interpret the code. He hoped that the Committee would arrive at a broader definition.

Written testimony is attached (EXHIBIT 12)

REP. PISTORIA closed the hearing on HOUSE BILL 193.

HB 193

793

GENERAL OPERATION  
AND CONDUCT OF BUSINESS

7-5-4301

(c) sections of Title 7, chapter 5, part 1, that address procedures or effects which are neither addressed by this part nor in conflict with any provision of this part.

History: En. Sec. 1, Ch. 315, L. 1981.

Compiler's Comments

*Erroneous Reference:* The reference in (1) which suggests that this part has provisions governing initiative and referendum procedures is erroneous. Those provisions were repealed by sec. 407, Ch. 571, L. 1979. For the current provisions governing initiative and referendum

procedures, see Title 7, chapter 5, part 1, as referred to in (2).

*Codification Instruction:* Section 2, Ch. 315, L. 1981, provided: "Section 1 is intended to be codified as an integral part of Title 7, chapter 5, part 42, and the provisions of section 1 apply to Title 7, chapter 5, part 42."

7-5-4209 and 7-5-4210 reserved.

7-5-4211 through 7-5-4225. Repealed. Sec. 407, Ch. 571, L. 1979.

Compiler's Comments

*Histories of Repealed Sections:*

7-5-4211 through 7-5-4216. En. Ch. 167, L. 1907; Sec. 3266, Rev. C. 1907; re-en. Sec. 5058, R.C.M. 1921; re-en. Sec. 5058, R.C.M. 1935; amd. Sec. 1, Ch. 24, L. 1951; amd. Sec. 1, Ch. 126, L. 1967; R.C.M. 1947, 11-1104.

7-5-4217. (1)En. Ch. 167, L. 1907; Sec. 3269, Rev. C. 1907; re-en. Sec. 5061, R.C.M. 1921; re-en. Sec. 5061, R.C.M. 1935; amd. Sec. 1, Ch. 94, L. 1967; Sec. 11-1107, R.C.M. 1947; (2)En. Ch. 167, L. 1907; Sec. 3276, Rev. C. 1907; re-en. Sec. 5068, R.C.M. 1921; re-en. Sec. 5068, R.C.M. 1935; Sec. 11-1114, R.C.M. 1947; R.C.M. 1947, 11-1107, 11-1114.

7-5-4218. En. Ch. 167, L. 1907; Sec. 3275, Rev. C. 1907; re-en. Sec. 5067, R.C.M. 1921; re-en. Sec. 5067, R.C.M. 1935; R.C.M. 1947, 11-1113.

7-5-4219. En. Ch. 167, L. 1907; Sec. 3274, Rev. C. 1907; re-en. Sec. 5066, R.C.M. 1921; re-en. Sec. 5066, R.C.M. 1935; R.C.M. 1947, 11-1112(part).

7-5-4220. En. Ch. 167, L. 1907; Secs. 3267, 3270, 3271, Rev. C. 1907; re-en. Secs. 5059, 5062, 5063, R.C.M. 1921; re-en. Secs. 5059, 5062, 5063, R.C.M. 1935; R.C.M. 1947, 11-1105, 11-1108, 11-1109.

7-5-4221. En. Ch. 167, L. 1907; Sec. 3272, Rev. C. 1907; re-en. Sec. 5064, R.C.M. 1921; re-en. Sec. 5064, R.C.M. 1935; R.C.M. 1947, 11-1110.

7-5-4222. En. Ch. 167, L. 1907; Sec. 3273, Rev. C. 1907; re-en. Sec. 5065, R.C.M. 1921; re-en. Sec. 5065, R.C.M. 1935; R.C.M. 1947, 11-1111(part).

7-5-4223. En. Ch. 167, L. 1907; Sec. 3274, Rev. C. 1907; re-en. Sec. 5066, R.C.M. 1921; re-en. Sec. 5066, R.C.M. 1935; R.C.M. 1947, 11-1112(part).

7-5-4224 and 7-5-4225. En. Ch. 167, L. 1907; Sec. 3273, Rev. C. 1907; re-en. Sec. 5065, R.C.M. 1921; re-en. Sec. 5065, R.C.M. 1935; R.C.M. 1947, 11-1111(part).

USE FOR  
H.B. 193

Part 43

Municipal Contracts and Franchises

7-5-4301. Power to enter and execute contracts. (1) The city or town council has power to make any and all contracts necessary to carry into effect the powers granted by this code and to provide for the manner of executing the same.

(2) All necessary contracts for professional, technical, engineering, and legal services are excluded from the provisions of 7-5-4302 through 7-5-4304, 7-5-4306, and 7-5-4307.

History: (1)En. Subd. 63, Sec. 5039, R.C.M. 1921; amd. Sec. 1, Ch. 115, L. 1925; amd. Sec. 1, Ch. 20, L. 1927; re-en. Sec. 5039.62, R.C.M. 1935; Sec. 11-965, R.C.M. 1947; (2)En. Sec. 1, Ch. 48, L. 1907; Sec. 3278, Rev. C. 1907; re-en. Sec. 5070, R.C.M. 1921; amd. Sec. 1, Ch. 22, L. 1927; re-en. Sec. 5070, R.C.M. 1935; amd. Sec. 1, Ch. 18, L. 1939; amd. Sec. 1, Ch. 59, L. 1941; amd. Sec. 1, Ch. 153, L. 1947; amd. Sec. 1, Ch. 139, L. 1949; amd. Sec. 1, Ch. 220, L. 1959; amd. Sec. 1, Ch. 26, L. 1963; amd. Sec. 1, Ch. 121, L. 1969; amd. Sec. 1, Ch. 371, L. 1971; Sec. 11-1202, R.C.M. 1947; R.C.M. 1947, 11-965, 11-1202(part).

**\* 7-5-4302. Competitive, advertised bidding required for certain purchase and construction contracts.** (1) Except as provided in 7-5-4303, all contracts for the purchase of any automobile, truck, other vehicle, road machinery, other machinery, apparatus, appliances, or equipment, for any materials or supplies of any kind, or for construction, repair, or maintenance for which must be paid a sum exceeding \$10,000 must be let to the lowest responsible bidder after advertisement for bids.

(2) Such advertisement shall be made in the official newspaper of the city or town if there be such official newspaper, and if not, it shall be made in a daily newspaper of general circulation published in the city or town if there be such and, otherwise, by posting in three of the most public places in the city or town. Such advertisement, if by publication in a newspaper, shall be made once each week for 2 consecutive weeks, and the second publication shall be made not less than 5 days or more than 12 days before the consideration of bids. If such advertisement is made by posting, 15 days must elapse, including the day of posting, between the time of the posting of such advertisement and the day set for considering bids.

(3) The council may postpone action as to any such contract until the next regular meeting after bids are received in response to such advertisement and may reject any and all bids and readvertise as provided herein.

History: En. Sec. 1, Ch. 48, L. 1907; Sec. 3278, Rev. C. 1907; re-en. Sec. 5070, R.C.M. 1921; amd. Sec. 1, Ch. 22, L. 1927; re-en. Sec. 5070, R.C.M. 1935; amd. Sec. 1, Ch. 18, L. 1939; amd. Sec. 1, Ch. 59, L. 1941; amd. Sec. 1, Ch. 153, L. 1947; amd. Sec. 1, Ch. 139, L. 1949; amd. Sec. 1, Ch. 220, L. 1959; amd. Sec. 1, Ch. 26, L. 1963; amd. Sec. 1, Ch. 121, L. 1969; amd. Sec. 1, Ch. 371, L. 1971; R.C.M. 1947, 11-1202(part); amd. Sec. 1, Ch. 429, L. 1981.

**Compiler's Comments**

1981 Amendment: Extended the coverage of the types of contracts to include repair and

maintenance; increased the minimum contract amount requiring bids from \$4,000 to \$10,000 in (1).

**\* 7-5-4303. Exemptions from bidding or advertising requirements for certain contracts.** (1) The provisions of 7-5-4302 as to advertisement for bids shall not apply upon the happening of any emergency caused by fire, flood, explosion, storm, earthquake, riot, insurrection, or other similar emergency, but in such case the council may proceed in any manner which, in the judgment of three-fourths of the members of the council present at the meeting, duly recorded in the minutes of the proceedings of the council by aye and nay vote, will best meet the emergency and serve the public interest. Such emergency shall be declared and recorded at length in the minutes of the proceedings of the council at the time the vote thereon is taken and recorded.

(2) When there are sufficient funds in the budget for supplies or equipment, a city or town may, without bid, purchase such supplies or equipment from government agencies available to cities or towns when the same can be purchased by such city or town at a substantial saving to such city or town.

History: En. Sec. 1, Ch. 48, L. 1907; Sec. 3278, Rev. C. 1907; re-en. Sec. 5070, R.C.M. 1921; amd. Sec. 1, Ch. 22, L. 1927; re-en. Sec. 5070, R.C.M. 1935; amd. Sec. 1, Ch. 18, L. 1939; amd. Sec. 1, Ch. 59, L. 1941; amd. Sec. 1, Ch. 153, L. 1947; amd. Sec. 1, Ch. 139, L. 1949; amd. Sec. 1, Ch. 220, L. 1959; amd. Sec. 1, Ch. 26, L. 1963; amd. Sec. 1, Ch. 121, L. 1969; amd. Sec. 1, Ch. 371, L. 1971; R.C.M. 1947, 11-1202(part).

**\* 7-5-4304. Certain contracts to be submitted to voters.** No contract may be let extending over a period of 5 years or more without first submitting the question to a vote of the electors of the city or town.

History: En. Sec. 1, Ch. 48, L. 1907; Sec. 3278, Rev. C. 1907; re-en. Sec. 5070, R.C.M. 1921; amd. Sec. 1, Ch. 22, L. 1927; re-en. Sec. 5070, R.C.M. 1935; amd. Sec. 1, Ch. 18, L. 1939; amd. Sec. 1,

By Henry "Hank" ...

PROPOSED AMENDMENT TO HOUSE BILL NO. 193

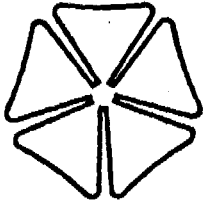
Page 1, line 17.

Following: "financial."

Strike: "."

Insert: ", landscape architecture, land surveyors,"





THE GARDEN CITY  
HUB OF FIVE VALLEYS

# Missoula, Montana 59802

January 19, 1983

OFFICE OF CITY ATTORNEY  
201 West Spruce Street  
Phone 721-4700

83-44

Local Government Committee  
Members Montana State House of  
Representatives  
Montana State Capitol  
Helena, Montana 59620

Re: House Bill 193 delineating specific  
professions from municipal  
contract restrictions

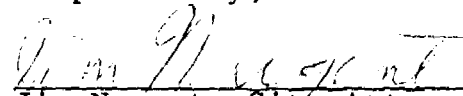
House Local Government Committee Members:

The City of Missoula would like to speak in opposition to House Bill 193 pertaining to "Delineating Specific Professions from Municipal Contract Restrictions". This is a bill that causes the City of Missoula great concern. HB 193 narrows or further restricts the type of city or town contracts that are presently excluded from the competitive advertised bidding requirements established in Sections 7-5-4302 through 7-5-4304, 7-5-4306, and 7-5-4307, M.C.A., by eliminating the words "professional and technical". Obviously, House Bill 193 takes power and flexibility away from cities and towns by virtue of its more restrictive language. Once again the state legislature is interfering with the ability of cities and towns to manage their own affairs.

Individual professional and technical talents by their very nature vary dramatically in experience and quality. HB 193 would require a city or town to accept the lowest responsible bidder after advertised competitive bidding for most professional and technical talents, such as labor negotiators, expert witnesses, real estate appraisers, etc. A responsible bidder very likely may be lacking in experience and quality of talent. House Bill 193 will do a disservice to city and town taxpayers by increasing the possibility that inadequate or lesser quality talents will be required to be retained by cities and towns.

Therefore, the City of Missoula urges each of you to vote against House Bill 193. Thank you for considering our comments on this Bill.

Respectfully,

  
Jim Nugent, City Attorney

JN/jd

## VISITOR'S REGISTER

HOUSE LOCAL GOVERNMENT

COMMITTEE

BILL HOUSE BILL 193

DATE 1-20-83

SPONSOR      PISTORIA

[illegible]

IF YOU CARE TO WRITE COMMENTS, ASK SECRETARY FOR LONGER FORM.

WHEN TESTIFYING PLEASE LEAVE PREPARED STATEMENT WITH SECRETARY.

CHAIRMAN McBRIDE: As I understand, they will not give the money out until they have it all. It may be a couple of months later that they actually get the money to the counties.

REP. DARKO: This money goes to two different sources--the county road fund and the rest goes into the foundation program to be divided equally among the counties. The road fund money gets their whole share and the money that goes to the foundation fund is divided equally.

REP. SALES: The federal government sends the state auditor a payment which is an estimate. He distributes it. When the final payment is made, it may turn out that it is too high and so the auditor has to figure out how to balance the books.

CHAIRMAN McBRIDE: What is the timing when they give the money out based on those two months?

REP. VINGER: Two months later they would make a final payment in full--from October to December.

CHAIRMAN McBRIDE: It would cause the county not to get their October payment until December. In December, they could count on it being the total amount.

Question was called and HOUSE BILL 239 PASSED DO PASS UNANIMOUSLY.

#### HOUSE BILL 193

REP. PISTORIA, sponsor. This bill delineates specific professions be excluded from municipal contract restrictions.

REP. SALES: Moved DO NOT PASS.

REP. PISTORIA: Moved that a substitute motion of DO PASS be accepted. He felt that the bill was too strict and amended the bill (EXHIBIT 2).

The amendments were voted on and PASSED.

REP. PISTORIA: Moved HOUSE BILL 193 DO PASS AS AMENDED.

Question was called and HOUSE BILL 193 PASSED.

REP. SALES abstained.

#### HOUSE BILL 162

REP. YARDLEY, sponsor. This bill is an act to eliminate the requirement that a county treasurer keep a separate accounting of the expenditures for each budgeted fund.

AMEND HOUSE BILL 193 AS FOLLOWS:

1. Title, line 4.

Following: "DELINEATING"

Strike: "SPECIFIC"

2. Page 1, line 17.

Following: "~~technical,~~"

Insert: "professional, technical,"

Strike : "medical, nursing, architectural, financial,"

3. Page 1.

Following: line 20

Insert: "(3) In subsection (2) each of the enumerated services are intended to include only those services that require advanced or specialized intellectual education, knowledge, and training and that involve exercise of discretion and judgment. Such services do not include services characterized as routine mental, manual, physical or mechanical."

# STANDING COMMITTEE REPORT

January 26, 1983

MR. SPEAKER

We, your committee on LOCAL GOVERNMENT

having had under consideration HOUSE Bill No. 193

first reading copy ( white )  
color

A BILL FOR AN ACT ENTITLED: "AN ACT DELINEATING SPECIFIC PROFESSIONS  
EXCLUDED FROM MUNICIPAL CONTRACT RESTRICTIONS; AMENDING SECTION  
7-5-4301, MCA; AND PROVIDING AN EFFECTIVE DATE."

Respectfully report as follows: That HOUSE Bill No. 193

**BE AMENDED AS FOLLOWS:**

1. Title, line 4.

Following: "DELINEATING"

Strike: "SPECIFIC"

2. Page 1, line 17.

Following: "technical,"

Insert: "professional, technical,"

Strike: "medical, nursing, architectural, financial,"

3. Page 1.

Following: line 20

Insert: "(3) In subsection (2) each of the enumerated services are intended to include only those services that require advanced or specialized intellectual education, knowledge, and training and that involve exercise of discretion and judgment. Such services do not include services characterized as routine mental, manual, physical or mechanical."

**AND AS AMENDED**

DO PASS

March 17, 1983

Page 2

Sen. Hammond felt that if they have studied this for three years, he felt that they have fulfilled the constitutional requirement and saw no problem.

Dave Bohyer pointed out that the Constitution says it must be done every 10 years, not within 10 years. There was some confusion that the election in 1983 would meet the requirements of the 10 years being it was within 10 years but that is not the way it is stated in the Constitution. It says it must be every 10 years.

The hearing was closed on HB 121.

CONSIDERATION OF HOUSE BILL NO. 193: Rep. Paul Pistoria, District #39, sponsor of the bill, said it is simply a matter of definition. He passed out a copy of the present law and referred to different portions of it. The word "professional" can mean anything; boxer, doctor, etc. How do you define it? It was defined in the House Committee. He handed out copies of the amendment so the Committee would know exactly what was amended into the bill. He explained a situation in Great Falls with the new sewer plant and handed out a copy of that contract which showed how they got around using a "professional". He said the word is to define professional and technical is in the state statutes and submitted a copy to the committee of the statutes. He also submitted a copy of a letter from Lee C. Nelson, contractor and also City Commissioner from Great Falls, urging the passage of the bill.

There were no proponents and no opponents.

There were no questions from the committee and the hearing was closed on House Bill 193.

CONSIDERATION OF HOUSE BILL NO. 343: Rep. Gary Spaeth, District #71, said that this deals with municipal volunteer fire departments and handed out a copy of the bill along with a section of the present statutes. He said volunteer fire departments in small towns are essentially combined with the rural fire departments and felt this is a good working relationship as both areas benefit. In the rural departments, as far as equipment is concerned, different statutes apply. In the county you have the county commissioners setting a special levy and in the city you have a city governing body and they essentially have a 2 mill cap. This bill would give the same authority to the city council and the county commissioners, and urged the committee to adopt this bill.

PROPOSERS: Davie Fisher, Montana Volunteer Fire Departments, said that Rep. Spaeth had explained it very well and was in support of the bill.

Clem Duaine, President of the Montana Volunteer Firemen's Association said it was the result of a resolution acted on at their last convention and wanted to go on record as supporting this bill.

There were no further proponents and no opponents.

DISCUSSION OF HOUSE BILL NO. 343: Sen. Ochsner asked if they are now

March 17, 1983

Page 8

DISPOSITION OF HOUSE BILL NO. 830: Sen. Story MOVED HB 788 BE NOT CONCURRED IN. MOTION CARRIED, with Sen. Fuller voting "no".

FURTHER CONSIDERATION OF HOUSE BILL NO. 172: Sen. Marbut said that the fiscal note has no relation to the bill. It was the consensus of the committee that no action be taken until Sen. Van Valkenburg returns.

DISPOSITION OF HOUSE BILL NO. 171: This is to annex into a fire district. After the person goes through all of the requirements and goes before the county commissioners, it could be thrown out. Sen. Marbut felt this is inappropriate and felt it would be a benefit for these people to be in a fire district. He tried to work out some amendments but there was no way it could be done to do what he wanted it to do. Sen. Ochsner agreed with Sen. Marbut. Sen. Marbut MOVED HB 171 BE NOT CONCURRED IN. MOTION CARRIED with Sen. Conover voting "no". Sen. Marbut will carry the bill on the floor.

FURTHER CONSIDERATION OF HOUSE BILL NO. 121: Sen. Hammond MOVED THAT HB 121 BE NOT CONCURRED IN. It was brought out that the 10-year requirement for review is constitutional and the three year is statutory. Paul Rapp-Svrcek, Legislative Aide to the Missoula delegation, said they did not want a conflict should they have an election this fall. They wanted to simply clarify that it was three years between elections and thought it was brought about by the local government study commission. Sen. Crippen felt it may be a bad situation - just to clarify it. Sen. Marbut asked if they couldn't just call a special election? The question of an alternative form of government has to be on the ballot in 1986 and Dave Bohyer said they are going to run into a problem in 1986 because of this. Statutorily, they are going to be four days short. The election will be November 8, 1986 and the election this fall is, he thought, November 4, 1983. Chairman McCallum said they are trying to get two elections in three years. Sen. Crippen suggested that the committee hold this bill until Sen. Van Valkenburg returns because he is co-sponsor of the bill. There was NO ACTION taken on the motion.

DISPOSITION OF HOUSE BILL NO. 193: Sen. Boylan MOVED HB 193 BE CONCURRED IN. MOTION CARRIED UNANIMOUSLY.

DISPOSITION OF HOUSE BILL NO. 282: Sen. Story MOVED HB 282 BE NOT CONCURRED IN. Sen. Story said if the state fire marshall is authorized to do inspections and can appoint deputies to act on his behalf they have the authority without messing around with these guys. The sheriff has the same authorization. Sen. Ochsner said that the fire marshall could appoint one of these fire chiefs. MOTION CARRIED with Sen. Crippin voting "no".

FURTHER CONSIDERATION OF HOUSE BILL NO. 343: Sen. Story said if they passed this bill it would be the first time they did not set a ceiling on a levy. Chairman McCallum said the rural fire districts have no limits on what can be spent. Dave Bohyer read the statute to the committee concerning this. Sen. Hammond said he did not quite understand the remark that cities and counties are out of equality and he wondered what the need was for this bill. Sen. Ochsner MOVED THAT HB 343 BE NOT CONCURRED IN. Sen. Hammond said he would rather wait on

(Type in committee members names and have 50 printed to start.)

ROLL CALL

LOCAL GOVERNMENT

COMMITTEE

48th LEGISLATIVE SESSION -- 1983

Date <sup>17</sup>3/12/8

| NAME           | PRESENT | ABSENT | EXCUSED |
|----------------|---------|--------|---------|
| OCHSNER        | ✓       |        |         |
| CRIPPEN        | ✓       |        |         |
| HAMMOND        | ✓       |        |         |
| STORY          | ✓       |        |         |
| MARBUT         | ✓       |        |         |
| CONOVER        | ✓       |        |         |
| FULLER         | ✓       |        |         |
| THOMAS         | ✓       |        |         |
| VAN VALKENBURG |         |        | ✓       |
| BOYLAN         | ✓       |        |         |
| McCALLUM       | ✓       |        |         |
|                |         |        |         |
|                |         |        |         |
|                |         |        |         |
|                |         |        |         |



Reed-Mem-Jan. 24, 1983

See Page  
for H.B. 1

1. Executive. The term "employee employed in a bona fide executive...capacity..." in M.A.C., Section 24-3.14BII(2)S1420 means any employee:
  - (a) Whose primary duty consists of the management of the enterprise in which he is employed or of a customarily recognized department of a subdivision thereof; and
  - (b) Who customarily and regularly directs the work of two or more other employees therein; and
  - (c) Who has the authority to hire or fire other employees or whose suggestions and recommendations as to the hiring and firing or as to the advancement and promotion or any other change in status of other employees will be given particular weight; and
  - (d) Who customarily and regularly exercises discretionary powers; and
  - (e) Who does not devote more than 20 percent or, in the case of an employee of a retail or service establishment, who does not devote as much as 40 percent of his hours or work in a workweek to activities which are not directly and closely related to the performance of the work described in subsection (a) through (d) of this section: Provided that this paragraph shall not apply in the case of an employee who is in sole charge of an independent establishment or a physically separated branch establishment; and
  - (f) Who is compensated for his services on a salary basis at a rate of not less than \$150 per week...exclusive of board, lodging, or other facilities. Provided that an employee who is compensated on a salary basis at a rate of not less than \$200 per week...exclusive of board, lodging or other facilities, and whose primary duty consists of the management of the enterprise in which he is employed or of a customarily recognized department or subdivision thereof, and includes a customary and regular direction of the work of two or more employees therein, shall be deemed to meet all of the requirements of this section. This subsection (1)(f) shall not apply to employees whose salary or wages are fixed by legislative action.
2. Administrative. (1) The term "employee employed in a bona fide...administrative...capacity..." in M.A.C., Section 24-3.14BII(2)-S1430 means any employee:

Whose primary duty consists of:

The performance of office or non-manual work directly related to management policies or general business operations of his employer or his employer's customers...

- (2) Who customarily and regularly exercises discretion and independent judgment; and
- (3) (a) Who regularly and directly assists a proprietor, or an employee employed in a bona fide executive or administrative capacity...or
  - (b) Who performs under only general supervision work along specialized or technical lines requiring special training, experience, or knowledge, or
  - (c) Who executes under only general supervision special assignments and tasks; and
- (4) Who does not devote more than 20 percent, or, in the case of an employee of a retail or service establishment, who does not devote as much as 40 percent, of his hours worked in the workweek to activities which are not directly and closely related to the performance of the work described in paragraph (1) of this section; and
- (5) Who is compensated for his services on a salary or fee basis at a rate of not less than \$150 per week...exclusive of board, lodging, or other facilities, or

Provided, that an employee who is compensated on a salary or fee basis at a rate of not less than \$200 per week, exclusive of board, lodging, or other facilities, and whose primary duty consists of the performance of work described in paragraph (1) of this section, which includes work requiring the exercise of discretion and independent judgment, shall be deemed to meet all of the requirements of this section. This subsection (5) shall not apply to employees whose salary or wages are fixed by legislative action.

HB 193 ?  
X 3. Professional. (1) The term "employee employed in a bona fide... professional capacity..." in M.A.C., Section 24-3.14BII(2)-S1440 means any employee:

- (a) Whose primary duty consists of the performance of:
  - (i) Work requiring knowledge of an advanced type in a field of science or learning customarily acquired by a prolonged course of specialized intellectual instruction and study, as distinguished from a general academic education and from an apprenticeship, and from training in the performance of routine mental, manual, or physical processes; or
  - (ii) Work that is original and creative in character in a recognized field of artistic endeavor (as opposed to work which can be produced by a person endowed with a general manual or intellectual ability and training), and the result of which depends primarily on the invention, imagination, or talent of the employee; or

(b) Whose work requires consistent exercise of discretion and judgment in its performance; and

(c) Whose work is predominantly intellectual and varied in character (as opposed to routine mental, manual, mechanical, or physical work) and is of such character that the output produced or the result accomplished cannot be standardized in relation to a given period of time; and

(d) Who does not devote more than 20 percent of his hours worked in a workweek to activities which are not an essential part of the necessarily incident to the work described in paragraphs (a) through (c) of this section; and

(e) Who is compensated for his services on a salary or fee basis at a rate of not less than \$150 per week...exclusive of board, lodging, or other facilities. Provided that this paragraph shall not apply in the case of an employee who is the holder of a valid license or certificate permitting the practice of law or medicine or any of their branches and who is actually engaged in the practice thereof...and provided further in that an employee who is compensated on a salary or fee basis at a rate of not less than \$200 per week...exclusive of board, lodging, or other facilities, and whose primary duty consists of the performance either of work described in paragraph (1) of this section, which includes work requiring the consistent exercise of discretion and judgment or of work requiring invention, imagination, or talent in a recognized field of artistic endeavor, shall be deemed to meet all of the requirements of this section. This subsection (1)(e) shall not apply to employees whose salary or wages are fixed by legislative action.

This compensatory time and overtime pay policy shall apply to all full-time employees or part-time employees if their workday exceeds eight (8) hours. These employees may be permanent, temporary, or seasonal employees.

This policy shall be utilized unless it conflicts with negotiated labor contract provisions, which shall take precedence to the extent applicable.

Any questions concerning this policy should be directed to the Personnel Division of the Department of Administration, phone 449-3871.

In her complaint because it's impor...

FOR H-8/93

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**761-6500**

# City said not required to take bids for sewage

By SUE O'CONNELL  
Tribune Staff Writer

Although the city was criticized this week for not going out to bid on operators for its sewage treatment plant, City Manager Al Johnson said the city saw no reason to do so.

He said state law does not require competitive bidding on contracts for professional services — the type of service provided by Envirotech Operating Services, which received a five-year city contract Tuesday.

The contract was the subject of a hotly contested City Commission meeting, and the commission split 3-2 in deciding the contract. Mayor Shirley Kuntz and Commissioner Lee Nelson voted against it.

State Rep. Paul Pistoria, D-Great Falls, continued his annual opposition to Envirotech during the meeting. And he berated the city for not advertising for bids on the contract, saying it was handed to Envirotech on "a silver platter."

Both Johnson and Dave Gliko, city attorney, point to a state law that exempts professional services for the bidding process. In general, all equipment purchases and construction work over \$10,000 must be put up for competitive bidding.

Johnson said when operation of the sewage treatment plant was first

contracted out in 1977, the city did advertise for bids. When Envirotech's two-year contract expired in 1979, the city decided not to advertise again.

This year, he said, "I don't think we even got into the idea of an advertisement."

But he defended the decision saying no firms have contacted the city with proposals of their own. In fact, he said, few firms even provide such services.

"It's not exactly the most hotly competitive type of operation," he added.

And because Envirotech has five years of experience at the city plant, Johnson said the firm had an obvious advantage. A new firm would have had to charge the city for extra costs of just starting up in a new city.

Johnson doesn't consider the lack of bids a mistake on the city's part. While he acknowledged the city did, in effect, go to bid on parking enforcement last year, he said the situation was not quite the same as Envirotech.

Both parking enforcement and operation of the sewage plant are considered professional services, he said. Therefore, neither would be subject to the bidding process. Yet he said the similarities end there.

A number of firms — including successful bidder APCOA — put up proposals for the parking contract. Yet none inquired about sewage treatment operation.

"It's a question of competition," he said.

This year, the city faced another question: whether it could operate the plant at a lower cost.

Johnson said this question carried more weight with the commission than did the question of competing firms. And in the end, he noted, "the cost really wasn't the consideration."

City estimates showed its costs to be about the same as those Envirotech projected — \$1.2 million a year.

Envirotech's contract looked more lucrative to the city because the firm is liable for any fines resulting from a violation of federal standards on the purity of wastewater, Johnson said. Some of the fines

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GREAT FALLS, MONTANA 59406

February 7, 1983

*Recd - used - Feb. 9, 1983*

Representative Paul Pistoria  
Capitol Station  
1205 East 8th Avenue  
Helena, Montana 59620

Dear Representative:

As I understand it, House Bill 193 would put professional services out for bid. This is as it should be.

I strongly favor house bill 193.

Sincerely,

Lee C. Nelson

*also, City Commissioner  
City of Great Falls.*

LCN:jg

# STANDING COMMITTEE REPORT

March 17

19 83

MR. **PRESIDENT**

We, your committee on **LOCAL GOVERNMENT**

having had under consideration **HOUSE**

Bill No. **193**

**Pistoria (R. Manning)**

Respectfully report as follows: That **HOUSE**

**193,**  
Bill No.

**third reading copy,**

**BE CONCURRED IN**

**BOOK**

The Committee voted unanimously, by voice vote, that the proposed amendments to HOUSE BILL 523 BE ADOPTED.

Senator Regan made the motion that on page 17, line 20, strike "may" and insert "shall". Senator Dover seconded the motion.

The Committee voted unanimously, by voice vote, that the proposed amendment to HOUSE BILL 523 BE ADOPTED.

Senator Dover made the motion that House Bill 523 As Amended Be Concurred In. Senator Boylan seconded the motion.

The Committee voted, by Roll Call Vote, 7-3 with Senators Gage, Goodover, and Lee voting no that HOUSE BILL 523 AS AMENDED BE CONCURRED IN.

ACTION ON HOUSE BILL 576: Senator Goodover made the motion that the Committee reconsider action on House Bill 576. Senator Regan seconded the motion.

The Committee voted unanimously, by voice vote, that HOUSE BILL 576 BE RECONSIDERED FOR ACTION.

Senator Regan made the motion that we make the license nontransferable and to be used only for that particular golf course. Senator Christiaens seconded the motion.

The Committee voted unanimously, by voice vote, that the proposed amendment to HOUSE BILL 576 BE ADOPTED.

Senator Dover made the motion that House Bill 576 Be Not Concurred In. Senator Boylan seconded the motion.

Senator Regan made a substitute motion that House Bill 576 Be Concurred In. Senator Severson seconded the motion.

The Committee voted 4-6 with Senators Boylan, Christiaens, Dover, Fuller, Gage and Lee voting no that HOUSE BILL 576 BE CONCURRED IN. Senator Regan's motion died.

The Committee decided to switch the votes; therefore, HOUSE BILL 576 will come out of Committee AS AMENDED BE NOT CONCURRED IN.

ACTION ON HOUSE BILL 193: Senator Kolstad stated this bill was taken off of Second Reading and brought into the Business and Industry Committee for further action.

Senator Goodover stated this is a bill that would create a problem in Great Falls by trying to run a sewage treatment plant. Most everyone in town is pleased by the way it is being run and this is an effort to restrict the City of Great Falls from doing this.

Senator Goodover made the motion that on page 21, strike subsection 3. The subsection specifically tries to tie the hands of the City of Great

Falls. The bill would then be in the original form without the amendment. Senator Dover seconded the motion.

Representative Paul Pistoria stated there have been lawsuits in Washington, D.C., defining "professionalism". He introduced the bill defining "professionalism" but felt it was too restrictive. He then went to Diana Dowling, Montana Legislative Council, and she helped him with this amendment. He gave the Committee various handouts which are attached to the minutes. (Exhibits 3, 4, 5, 6, 7, 8, and 9.)

After further discussion, the Committee voted, by Roll Call Vote, 2-8 with Senators Boylan, Christiaens, Fuller, Gage, Lee, Regan, Severson and Kolstad voting no that the proposed amendment to HOUSE BILL 193 BE ADOPTED. Senator Goodover's motion died.

Senator Regan made the motion that House Bill 193 Be Concurred In. Senator Lee seconded the motion.

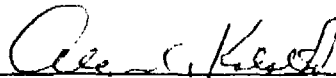
Senator Goodover made a substitute motion that House Bill 193 Be Tabled. Senator Dover seconded the motion.

The Committee voted, by Roll Call Vote, 2-8 with Senators Boylan, Christiaens, Fuller, Gage, Lee, Regan, Severson and Kolstad voting no that HOUSE BILL 193 BE TABLED. Senator Goodover's motion died.

The Committee decided to switch the votes; therefore, HOUSE BILL 193 will come out of Committee BE CONCURRED IN.

Senator Lee will carry this bill on the floor.

ADJOURN: There being no further business, the meeting adjourned at 11:45 a.m.

  
ALLEN C. KOLSTAD, CHAIRMAN



ROLL CALL

BUSINESS AND INDUSTRY COMMITTEE

48th LEGISLATIVE SESSION -- 1983

DATE 3-25-83

In Action

| NAME                       | PRESENT | ABSENT | EXCUSED |
|----------------------------|---------|--------|---------|
| PAUL F. BOYLAN             | ✓       |        |         |
| B. F. CHRIS CHRISTIAENS    | ✓       |        |         |
| HAROLD L. DOVER            | ✓       |        |         |
| DAVID FULLER               | ✓       |        |         |
| DELWYN GAGE                | ✓       |        |         |
| PAT M. GOODOVER            | ✓       |        |         |
| GARY P. LEE, VICE CHAIRMAN | ✓       |        |         |
| PAT REGAN                  | ✓       |        |         |
| PAT M. SEVERSON            | ✓       |        |         |
| ALLEN C. KOLSTAD, CHAIRMAN | ✓       |        |         |
|                            |         |        |         |
|                            |         |        |         |
|                            |         |        |         |
|                            |         |        |         |
|                            |         |        |         |

# STANDING COMMITTEE REPORT

March 25

19 83

MR. PRESIDENT

We, your committee on BUSINESS AND INDUSTRY

having had under consideration HOUSE Bill No. 193

PISTORIA (LEE)

Respectfully report as follows: That HOUSE Bill No. 193

BE CONCURRED IN

~~XXXXXX~~  
~~DO PASS~~

ROLL CALL VOTE

SENATE COMMITTEE BUSINESS AND INDUSTRY

Date 3/25/83

House Bill No. 193 Time       

| NAME                       | YES | NO |
|----------------------------|-----|----|
| PAUL F. BOYLAN             |     | ✓  |
| B. F. CHRIS CHRISTIAENS    |     | ✓  |
| HAROLD L. DOVER            | ✓   |    |
| DAVID FULLER               |     | ✓  |
| DELWYN GAGE                |     | ✓  |
| PAT M. GOODOVER            | ✓   |    |
| GARY P. LEE, VICE CHAIRMAN |     | ✓  |
| PAT REGAN                  |     | ✓  |
| PAT M. SEVERSON            |     | ✓  |
| ALLEN C. KOLSTAD, CHAIRMAN |     | ✓  |
|                            |     |    |
|                            |     |    |

Mimi Fancher  
Secretary

ALLEN C. KOLSTAD  
Chairman

Motion: Senator Goodover's Amendments -  
Delete Subsection 3.

(Include enough information on motion -- put with yellow copy of committee report.)

ROLL CALL VOTE

SENATE COMMITTEE BUSINESS AND INDUSTRY

Date 3/25/83 House Bill No. 193 Time           

| NAME                       | YES | NO |
|----------------------------|-----|----|
| PAUL F. BOYLAN             |     | ✓  |
| B. F. CHRIS CHRISTIAENS    |     | ✓  |
| HAROLD L. DOVER            | ✓   |    |
| DAVID FULLER               |     | ✓  |
| DELWYN GAGE                |     | ✓  |
| PAT M. GOODOVER            | ✓   |    |
| GARY P. LEE, VICE CHAIRMAN |     | ✓  |
| PAT REGAN                  |     | ✓  |
| PAT M. SEVERSON            |     | ✓  |
| ALLEN C. KOLSTAD, CHAIRMAN |     | ✓  |
|                            |     |    |
|                            |     |    |

Mimi Fancher  
Secretary

ALLEN C. KOLSTAD  
Chairman

Motion: Table House Bill 193. The  
Committee asked that the votes be  
switched. House Bill 193 will come  
out of committee & concurred in.

(Include enough information on motion -- put with yellow copy of committee report.)

H.B. 193

48th Legislature

HB 0193/02

HB 0193/02

## HOUSE BILL NO. 193

INTRODUCED BY PISTORIA, R. MANNING, MCCORMICK

A BILL FOR AN ACT ENTITLED: "AN ACT DELINEATING SPECIFIC PROFESSIONS EXCLUDED FROM MUNICIPAL CONTRACT RESTRICTIONS; AMENDING SECTION 7-5-4301, MCA; AND PROVIDING AN EFFECTIVE DATE."

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

Section 1. Section 7-5-4301, MCA, is amended to read:

"7-5-4301. Power to enter and execute contracts. (1)

The city or town council has power to make any and all contracts necessary to carry into effect the powers granted by this code and to provide for the manner of executing the same.

(2) All necessary contracts for professional, technical, medical, nursing, architectural, financial, professional, technical, engineering, and legal services are excluded from the provisions of 7-5-4302 through 7-5-4304, 7-5-4306, and 7-5-4307.

(1) IN SUBSECTION (2) EACH OF THE ENUMERATED SERVICES ARE INTENDED TO INCLUDE ONLY THOSE SERVICES THAT REQUIRE ADVANCED OR SPECIALIZED INTELLECTUAL EDUCATION, KNOWLEDGE, AND TRAINING AND THAT INVOLVE EXERCISE OF DISCRETION AND JUDGMENT. SUCH SERVICES DO NOT INCLUDE SERVICES

CHARACTERIZED AS ROUTINE, MENTAL, MANUAL, PHYSICAL, OR MECHANICAL."

NEW SECTION. Section 2. Effective date. This act is effective July 1, 1983.

-End-

Re defining "PROFESSIONAL" & TECHNICAL. That's all what this bill does. Professional & technical has been abused. Used to by...

HB 193

REFERENCE BILL

ORIGINAL

SUBMITTED BY: Rep. Paul Pistoria 3/25/83, EXHIBIT ~~1~~ 4

SENATE MEMBERS

PAT M. GOODOVER  
CHAIRMAN  
CARROLL GRAHAM  
JOSEPH P. MAZUREK  
JESSE O'HARA

HOUSE MEMBERS

JOHN VINCENT  
VICE CHAIRMAN  
REX MANUEL  
BURT L. HURWITZ  
BOBBY SPILKER



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Helena, MT. 59620

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ROBERTA MOODY  
DIRECTOR, LEGISLATIVE SERVICES  
ROBERT PERSON  
DIRECTOR, RESEARCH  
SHAROLE CONNELLY  
DIRECTOR, ACCOUNTING DIVISION  
ROBERT C. PYFER  
DIRECTOR, LEGAL SERVICES

March 24, 1983

TO: Senator Goodover  
FROM: Bob Pyfer *Boh*  
RE: House Local Government Committee  
Amendment to HB 193

Subsection (3) of 7-5-4301, MCA, (HB 193) was added by the House Local Government Committee. Lee Heiman, staffer to the committee, indicates that copies of the amendment were available to all committee members well in advance of executive action and that presumably all committee members read the short amendment prior to adopting it. The amendment was written at Representative Pistoria's request by, in my opinion, our very best drafter, Diana S. Dowling. The amendment is drawn from the dictionary definition and Department of Administration personnel rules definition of "professional" and "technical".

Allegedly, some city governments are broadly construing the exemption from bidding requirements for professional and technical services, which exemption is contained in subsection (2) of 7-5-4301, MCA, and contracting for services that are not strictly professional or technical (such as sewer plant operation) without going to bid. The intent of the House committee amendment is to define professional and technical services to avoid such broad construction without including a laundry list of services. The introduced bill removed the general terms "professional" and "technical" and provided a laundry list, but Representative Pistoria and the committee received numerous objections that the list did not include various professional and technical services (e.g. chiropractors, management consultants, landscape architects, software vendors, etc.). The committee determined that any such list would run the risk of not being sufficiently inclusive and so opted for the definitional language of new subsection (3).

Please let us know if we can be of further assistance.

RP:rm  
PYFER

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**761-6500**

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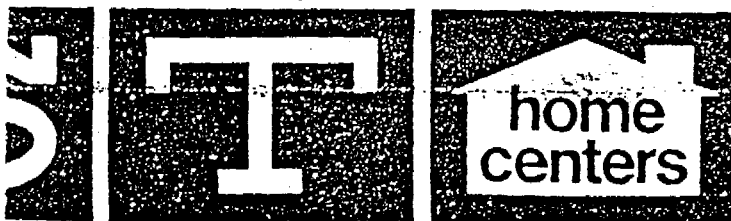
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City estimates showed its costs to be about the same as those Envirotech projected — \$1.2 million a year.

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WE ARE YOUR MOST  
COMPLETE  
GARDEN CENTER

In case I want to use

for use of provision

declaratory judgment

Proposal No. 886-83-1001.01

direct to Supreme Court for decision.

MUNICIPAL OPERATIONS AND MAINTENANCE AGREEMENT

No professional mentioned in contract only maintain

THIS AGREEMENT is made and entered into this \_\_\_\_\_ day of \_\_\_\_\_

1982, by and between the CITY of GREAT FALLS, a

municipal corporation of the State of Montana, herein referred to as the "CITY," and the ENVIROTECH CORPORATION, herein referred to as "ENVIROTECH," in the manner following.

WITNESSETH

WHEREAS, the CITY is the owner of a WASTEWATER TREATMENT PLANT which is located at 16th Avenue N.E. and the end of 6th Street N.E. at the Missouri River in the City of Great Falls, Montana; and

WHEREAS, ENVIROTECH is a corporation specializing in the management of water and wastewater treatment plants throughout the United States;

NOW, THEREFORE, in consideration of the mutual agreements herein contained, and subject to the terms and conditions herein stated, it is hereby understood and agreed by the parties hereto as follows:

I - AGREEMENT

NOTE - NOT PROFESSIONAL

ENVIROTECH agrees to furnish services of its various employees, associates and staff in the management, maintenance and operation of the following facilities:

X1) All equipment and facilities located within the fenced property at the 16th Avenue N.E. and the end of 6th Street N.E. at the Missouri River.

} THIS IS MAINTENANCE

X2) Those lift stations presently on-line. - THIS IS MAINTENANCE.

II - TERM

NOTE - NOW WHERE IN THIS AGREEMENT DOES IT MENTION PROFESSIONAL?

- The services shall commence on April 1, 1982, and expire five (5) years from the commencement date.

5 yr contract

SEE PAGE 11 - XIV - OPERATION -

DUE TO MAINTENANCE CLAUSE

HAS TO BE PUT ON BID. EVEN AGREEMENT.



III - COMPENSATION

1) The CITY shall pay ENVIROTECH, as compensation for the services to be performed for the operation, maintenance and laboratory analyses of the existing treatment facilities, the sum of \$101,667.00 <sup>2</sup> per month with additional adjustments as specified hereafter. Monthly payments are due the last of each month during which services are rendered.

2) From commencement of the contract until the contract expires, compensation shall be increased or decreased semi-annually according to the following rate schedules and U.S. Department of Labor, Bureau of Labor Statistics indices: Employment Cost Index - All Private Non-Farm, Western Region; Montana Power Rate Schedule; Producer Price Index for Industrial Chemicals (061); and Great Falls Gas Company Schedule. Increase or decrease in service costs shall be based on the sum total using the following formula:

| <u>WEIGHT</u> |   | <u>INDEX CHANGE</u>                |   | <u>WEIGHTED CHANGE</u> |
|---------------|---|------------------------------------|---|------------------------|
| 0.3           | X | (% Change in ECI)                  | = | Wt. % Change ECI       |
| 0.3           | X | (% Change in M.P. Rate)            | = | Wt. % Change M.P.      |
| 0.1           | X | (% Change in 061)                  | = | Wt. % Change 061       |
| 0.3           | X | (% Change in G.F. Gas<br>Co. Rate) | = | Wt. Change G.F. Gas    |

X The first increase or decrease in compensation shall be effective October 1, 1982, and shall be based on the weighted Bureau of Labor Statistics Indices as specified above between March, 1982, and September, 1982.

X Each subsequent increase or decrease in compensation shall be effective each April 1st and October 1st and shall be based on the prior six-month change in the indices. The percent change in compensation shall be applied to the previous month's compensation to determine the amount of increase or decrease.

IV - SCOPE OF SERVICES

X 1) ENVIROTECH will control, maintain and operate the CITY's facilities so that effluent discharged therefrom meets the weighted monthly average of effluent characteristics as stated in NPDES Permit No. MT-0021920, dated July 14, 1977, provided that at all times, the plant influent is free from abnormal or biologically toxic substances which cannot be treated or removed in the CITY's Treatment Plant using the existing process and facilities.

It is recognized by both parties that abnormal or biologically toxic substances which cannot be treated or removed in the CITY's Treatment Plant may enter the influent stream of the Treatment Plant. As soon as such substances are recognized, ENVIROTECH or the CITY will notify each other of this condition and work with each other to reduce or eliminate such substances to the best ability of each party. The CITY agrees that such cooperation in no way obligates ENVIROTECH beyond the stated responsibility in the above paragraph.

X 2) Process operations that will be covered by ENVIROTECH under this Agreement will only include:

also  
Maintain

Raw Sewage Pumps  
Mechanical Bar Screen/Shredder  
Primary Treatment  
Activated Sludge  
Secondary Settling  
Gravity Thickening  
Heat Treatment (Zimpro)  
Sludge Blending and Storage Tanks  
Vacuum Filtration  
Disinfection (Chlorination)  
Sludge Pumping Associated with Process Above  
Flotation Thickening

also  
Maintain

X 3) All vehicles and equipment presently assigned to the wastewater treatment plant will be provided for ENVIROTECH's use. ENVIROTECH agrees to use vehicles solely for operation and maintenance



of the wastewater treatment facility. Usage of these vehicles for any public service projects unrelated to operation and maintenance of the wastewater facility shall receive prior approval by the City Manager or his designate. Those vehicles and equipment which shall remain in CITY's ownership include, but are not limited to, those listed in Attachment A. CITY agrees to provide ENVIROTECH vehicles which are in good serviceable condition for the job requirements as specified in this contract agreement.

MAINTENANCE

X 4) Routine maintenance will be provided by ENVIROTECH for all process equipment and vehicles assigned by the CITY to ENVIROTECH. ENVIROTECH will pay for repair parts necessary during the term of services, provided that the aggregate amount which it shall be required to pay shall not exceed \$2,000.00 for each equipment item/vehicle less than ten years old or \$1,000.00 for each equipment item/vehicle more than ten years old. This aggregate amount shall be adjusted annually by the percentage change in the Employment Cost Index - All Private Non-Farm, Western Region Index. Inventory of equipment and vehicles and the documentation of routine maintenance will be maintained through the ENVIROTECH "Maintenance and Repair Control System." The City Manager or his designate shall have the right to inspect these maintenance performance and cost records during normal business hours. ENVIROTECH will submit a monthly "Maintenance Status Report to the CITY," outlining the maintenance actions accomplished during the previous month. Both parties agree that the CITY shall have the right to hire a qualified independent firm to review the maintenance program being conducted by Envirotech at the facility. Any such maintenance reviews shall be at the sole expense of the CITY, and the independent firm shall make no unreasonable requests of the CITY or ENVIROTECH.

5) An item of equipment is defined to include all of the "wire to water" components of any mechanical function hardware. For example, an item of equipment such as a positive displacement pump would include, but is not limited to, electrical starter, motor, pump shaft, impeller or piston and enclosure. It is estimated that the CITY's facilities contain 210 items of equipment. Such maintenance shall not include



costs associated with flood, fire, explosion or any other extraordinary occurrences not within the control of ENVIROTECH.

6) ENVIROTECH will pay all expenses incurred in usual, treatment plant operations including, but not limited to, wages, salaries, utilities, consumables such as chemicals, fuel, lubricants and contracted services, if any.

✓ 7) ENVIROTECH will staff the CITY's facilities with full-time employees experienced in wastewater treatment process control and maintenance procedures. Additional staff will be assigned to the facility during the service period in order to establish operation and maintenance procedures and train the permanent staff in process control and equipment maintenance.

8) ENVIROTECH will prepare all operating reports according to the State of Montana requirements and will prepare all process data reports, operation and maintenance reports and submit a copy of them to the CITY.

9) Should additional grit collection equipment prove to be a prudent addition to extend equipment life and usefulness, such additions will be made at the expense of the CITY.

10) Both parties agree that the CITY shall limit new industry flows and wastewater characteristics to the WASTEWATER TREATMENT PLANT to those limits established in the CITY Industrial Wastes Ordinance.

11) The CITY shall maintain all existing warranties, guarantees, and licenses that have been granted to the CITY as owner of the WASTEWATER TREATMENT PLANT for the benefit of ENVIROTECH during the ENVIROTECH operation of the WASTEWATER TREATMENT PLANT.

12) Both parties agree that the compensation stated in Article III above is for the operation of the WASTEWATER TREATMENT PLANT at the existing waste flow and characteristics and that a 20 percent increase or decrease in flow or total solids shall give either party the option to renegotiate such compensation upon written notification to the other party. The increase or decrease in flow or total solids shall be based on the daily average for a minimum of 12 months. The present rate of flow is 9.08 million gallons per day based on a 12 month average and the rate of total solids handled is currently 27,000 lbs. of solids per day.



Total solids are calculated as follows:

TOTAL SOLIDS = BOD SOLIDS + SUSPENDED SOLIDS

BOD SOLIDS (12 month average daily plant influent BOD  
mg/l) x (12 month average influent flow in  
million gallons per day) x (8.34 lbs/gallon)  
SUSPENDED SOLIDS (12 month average influent suspended solids  
mg/l) x (12 month average influent flow in  
million gallons per day) x (8.34 lbs/gallon)

13) ENVIROTECH will perform laboratory analyses for BOD and suspended solids on samples to be provided by the CITY for the purpose of Industrial Cost Recovery Monitoring at no additional expense to the CITY provided that such additional testing is limited to 20 percent of current testing volume.

V - CHANGE IN SERVICE SCOPE OR SERVICE TYPE

1) Any change in treatment plant operation, reporting requirements or personnel qualifications required by a governmental agency having jurisdiction to order such change may be authorized by the CITY. In such event, ENVIROTECH shall be paid such increased costs (in addition to the compensation stated in Article III above) as determined by a 30-day cost monitoring period. The increased costs shall include a reasonable amount for general administration and overhead expenses to ENVIROTECH. For such changes, ENVIROTECH will also be entitled to a reasonable profit. *IT IS TOO BIG*

2) The CITY may authorize and fund capital changes to the facilities which may result in decreased or increased operating costs at the treatment plant. In such event, both parties will mutually agree on the amount of cost savings or increase as determined by a 30-day cost monitoring period. Such decreased or increased costs will be realized by amendment to contract.

ENVIROTECH agrees to furnish detailed cost estimates to the CITY's consulting engineer for the purpose of determining the feasibility, savings or increased costs of capital changes proposed by the CITY.



## VI - HOLD HARMLESS AGREEMENT

ENVIROTECH hereby agrees to, and shall, hold the CITY, its elective and appointive boards, officers, agents and employees harmless from any liability for damage or claims for damage for personal injury, including death, as well as from claims for property damage which may arise from operations under this Agreement, whether such operations be by ENVIROTECH or by any subcontractor of ENVIROTECH, provided, however, that it is understood that this Agreement does not apply to bodily injury or property damage arising out of the discharge, dispersal, release or escape of the WASTEWATER TREATMENT PLANT effluent into or upon land, the atmosphere or any water course or body of water unless as a result of the negligence of ENVIROTECH and provided such discharge, dispersal, release or escape is sudden and accidental. The CITY agrees to undertake the defense of the parties in such suits which are not sudden and accidental and shall pay any judgments rendered. However, ENVIROTECH will provide the necessary technical assistance in support of the CITY in such a suit at no charge to the CITY. The CITY shall purchase and maintain standard fire insurance policies including extended coverage to the full insurable value of the WASTEWATER TREATMENT PLANT and lift stations and ENVIROTECH will be named as an additional insured according to its insurable interest under these policies during the life of this contract and ENVIROTECH shall have no liability to the CITY with respect to loss, damage and destruction covered by such policies.

## VII - INSURANCE

✱ ENVIROTECH shall obtain all insurance required under this article and such insurance shall be approved by the CITY as to form, amount and carrier.

work  
Comp  
'80r  
Employees  
1) Compensation Insurance - ENVIROTECH shall take out and maintain, during the life of this Agreement, workers' compensation insurance for all its employees at the site of the WASTEWATER TREATMENT



PLANT, and in case any work is sublet, ENVIROTECH shall require its subcontractor similarly to provide workers' compensation insurance for all of the latter's employees, unless such employees are covered by the protection afforded by ENVIROTECH. In case any class of employees engaged in work under this Agreement at the WASTEWATER TREATMENT PLANT is not protected under any workers' compensation law, ENVIROTECH shall provide, and shall cause each subcontractor to provide, adequate protection of employees not otherwise protected. ENVIROTECH indemnifies CITY for any damages resulting to it from failure of either ENVIROTECH or any subcontractor to take out or maintain such insurance.

X 2) Public Liability and Property Damage Insurance - ENVIROTECH shall take out and maintain during the life of this Agreement such public liability and property damage insurance as shall protect CITY, its elective and appointive boards, officers, agents and employees, ENVIROTECH and any subcontractor performing work covered by this Agreement from claims for damages for personal injury, including death, as well as from claims for property damages which may arise from ENVIROTECH's or any subcontractor's operations under this Agreement, whether such operations be by ENVIROTECH or by an ENVIROTECH subcontractor, and the amounts of such insurance shall be as follows:

Public Liability Insurance in an amount not less than \$1,000,000 combined single limits for personal injury and/or property damage.

3) Proof of Carriage of Insurance - ENVIROTECH shall furnish the CITY through the Public Works Director, concurrently with the execution thereof, with satisfactory proof of carriage of the insurance required, and each carrier shall give CITY at least thirty days prior notice of the cancellation of any policy during the effective period of this Agreement. The CITY shall be named as an insured on the insurance certificate.

#### VIII - RENEWAL

1) This Agreement may be renewed for successive terms of three (3) years as herein provided.



2) If ENVIROTECH desires to renew this Agreement, it shall give written notice to CITY ninety (90) days prior to the termination date. If ENVIROTECH's notice is conditional upon an increase in compensation, over and above the price adjustments in Article III, it shall include a statement to that effect, together with the amount of compensation in its notice, which shall also be accompanied by a written justification of its requested increase.

3) ENVIROTECH agrees to make its books and records relative to the operation of the WASTEWATER TREATMENT PLANT available for inspection by CITY, its agents, servants, employees or independent accountants for the specific purpose of determining the validity of any requested increase for compensation and for the general purpose of ascertaining compliance with the provisions of this Agreement. Such inspections shall be made during usual business hours. ENVIROTECH agrees to keep such books and records and will identify costs of operation of the WASTEWATER TREATMENT PLANT as distinguished from ENVIROTECH's other activities and that such books and records will be retained at its Divisional headquarters.

4) In the event that the laws or regulations of the State of Montana require, the CITY shall have the right to audit the financial records of ENVIROTECH in connection with this Agreement as required by Montana laws or regulations, but only to the extent and frequency required by such laws and regulations. ENVIROTECH agrees to make limited quantities (ten pages or less) of such records required above available in Great Falls at no additional cost to the CITY.

5) ENVIROTECH will work with the CITY and provide the information legally required by the CITY and Board of Underwriters for the express purpose of issuing new bonds for the Sewage Treatment Systems. Additional costs incurred by ENVIROTECH for this special effort will be reimbursed by the CITY.

NO  
COSTS  
BUT  
maintain  
everything





## IX - TERMINATION

1) This Agreement may be terminated by either the CITY or ENVIROTECH upon ninety (90) days written notice to the other party.

2) If this Agreement is terminated, ENVIROTECH shall furnish the services of a qualified superintendent of the WASTEWATER TREATMENT PLAN to the CITY for a period not to exceed ninety (90) days after the termination date, at CITY's request, for the purpose of continued supervision and of assisting in the placement and training of WASTEWATER TREATMENT PLANT personnel to be furnished by CITY. In such event, CITY shall pay to ENVIROTECH the salary, plus normal fringe benefits of the superintendent, plus \$50 per day, for such period.

## X - AMENDMENTS

This Agreement may be modified only by written amendment signed by both parties and failure on the part of either party to enforce any provision of the Agreement shall not be construed as a waiver of the rights to compel enforcement of such provision or provisions.

## XI - RELATIONSHIP

X It is understood that the relationship of ENVIROTECH to CITY is that of an independent contractor; however, the CITY, its employees, servants and guests shall be allowed upon the premises at all times as long as they do not interfere with the operation of the Plant.

## XII - ASSIGNMENT

X ENVIROTECH binds itself, its successors and assigns to perform all provisions of this Agreement. Except for the foregoing, neither CITY nor ENVIROTECH shall assign, subcontract or transfer their interests in this Agreement without the written consent of the other.



#### XIII - NOTICES

All notices shall be in writing and delivered in person or transmitted by certified mail, return receipt requested, postage prepaid. Notices required to be given to ENVIROTECH shall be addressed as follows:

Envirotech Operating Services  
One Waters Park Drive  
San Mateo, CA 94403

or to such other address as may be specified by written notice.

#### XIV - OPERATION

NOTE X The operation and maintenance of the WASTEWATER TREATMENT PLANT shall be done in a first class manner at all times in accordance with generally accepted practices for municipal wastewater treatment plants and shall comply with all Federal, State and local laws and regulations.

#### XV - PRESIDENT'S COUNCIL ON WAGE AND PRICE STABILITY REGULATIONS AND PROCEDURES AS ADOPTED JANUARY, 1979

ENVIROTECH will comply with the regulations and procedures of the President's Council on Wage and Price Stability as adopted January, 1979.

#### XVI - EQUAL EMPLOYMENT OPPORTUNITY

In accordance with the CITY of Great Falls affirmative action policy, the contractor agrees during the life of this contract not to discriminate against any employee or applicant for employment with respect to compensation, terms, conditions of other privileges of employment because of race, color, religion, sex, national origin, physical condition, age, creed, marital status or public assistance status. The contractor will include a similar provision in all subcontracts entered into for the performance of this contract. This



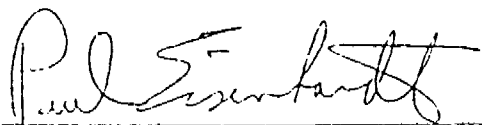
contract may be cancelled or terminated by the CITY of Great Falls and money due or to become due hereunder may be forfeited for a second or subsequent violation of the terms or conditions of this paragraph.

IN WITNESS WHEREOF, the CITY of GREAT FALLS, MONTANA, and the EOS DIVISION of ENVIROTECH CORPORATION have caused this Agreement to be duly executed as of the day and year first above written.

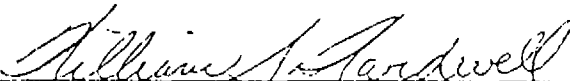
ATTEST:

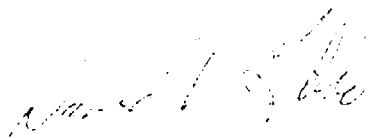
\_\_\_\_\_  
Clerk of Commission

By: \_\_\_\_\_ (SEAL)  
Mayor



Paul Eisenhardt  
Vice President & General Manager  
Envirotech Operating Services

By:   
William S. Wardwell  
Director of O&M Marketing & Sales  
Envirotech Operating Services





ATTACHMENT A

Vehicle Equipment List

| <u>Quantity</u> | <u>Vehicle Description</u> |
|-----------------|----------------------------|
| 2               | ½-ton Pickup Truck*        |
| 1               | Dumptruck                  |
| 1               | Load Lugger                |

\*One ½-ton Pickup Truck may be replaced with one ¾-ton Pickup Truck



P. O. BOX 6607  
TELEPHONE 406-727-6200

110 62ND STREET SOUTH  
GREAT FALLS, MONTANA 59406

February 7, 1983

*Rec'd - Wed - Feb. 9, 1983*

Representative Paul Pistoria  
Capitol Station  
1205 East 8th Avenue  
Helena, Montana 59620

Dear Representative:

As I understand it, House Bill 193 would put proffessional services out for bid. This is as it should be.

I strongly favor house bill 193.

LCN:jg

Sincerely,

Lee C. Nelson

*also, City Commissioner  
City of Great Falls.*

(c) sections of Title 7, chapter 5, part 1, that address procedures or effects which are neither addressed by this part nor in conflict with any provision of this part.

History: En. Sec. 1, Ch. 315, L. 1981.

#### Compiler's Comments

*Erroneous Reference:* The reference in (1) which suggests that this part has provisions governing initiative and referendum procedures is erroneous. Those provisions were repealed by sec. 407, Ch. 571, L. 1979. For the current provisions governing initiative and referendum

procedures, see Title 7, chapter 5, part 1, as referred to in (2).

*Codification Instruction:* Section 2, Ch. 315, L. 1981, provided: "Section 1 is intended to be codified as an integral part of Title 7, chapter 5, part 42, and the provisions of section 1 apply to Title 7, chapter 5, part 42."

7-5-4209 and 7-5-4210 reserved.

7-5-4211 through 7-5-4225. Repealed. Sec. 407, Ch. 571, L. 1979.

#### Compiler's Comments

##### *Histories of Repealed Sections:*

7-5-4211 through 7-5-4216. En. Ch. 167, L. 1907; Sec. 3266, Rev. C. 1907; re-en. Sec. 5058, R.C.M. 1921; re-en. Sec. 5058, R.C.M. 1935; amd. Sec. 1, Ch. 24, L. 1951; amd. Sec. 1, Ch. 126, L. 1967; R.C.M. 1947, 11-1104.

7-5-4217. (1)En. Ch. 167, L. 1907; Sec. 3269, Rev. C. 1907; re-en. Sec. 5061, R.C.M. 1921; re-en. Sec. 5061, R.C.M. 1935; amd. Sec. 1, Ch. 94, L. 1967; Sec. 11-1107, R.C.M. 1947; (2)En. Ch. 167, L. 1907; Sec. 3276, Rev. C. 1907; re-en. Sec. 5068, R.C.M. 1921; re-en. Sec. 5068, R.C.M. 1935; Sec. 11-1114, R.C.M. 1947; R.C.M. 1947, 11-1107, 11-1114.

7-5-4218. En. Ch. 167, L. 1907; Sec. 3275, Rev. C. 1907; re-en. Sec. 5067, R.C.M. 1921; re-en. Sec. 5067, R.C.M. 1935; R.C.M. 1947, 11-1113.

7-5-4219. En. Ch. 167, L. 1907; Sec. 3274, Rev. C. 1907; re-en. Sec. 5066, R.C.M. 1921; re-en. Sec. 5066, R.C.M. 1935; R.C.M. 1947, 11-1112(part).

7-5-4220. En. Ch. 167, L. 1907; Secs. 3267, 3270, 3271, Rev. C. 1907; re-en. Secs. 5059, 5062, 5063, R.C.M. 1921; re-en. Secs. 5059, 5062, 5063, R.C.M. 1935; R.C.M. 1947, 11-1105, 11-1108, 11-1109.

7-5-4221. En. Ch. 167, L. 1907; Sec. 3272, Rev. C. 1907; re-en. Sec. 5064, R.C.M. 1921; re-en. Sec. 5064, R.C.M. 1935; R.C.M. 1947, 11-1110.

7-5-4222. En. Ch. 167, L. 1907; Sec. 3273, Rev. C. 1907; re-en. Sec. 5065, R.C.M. 1921; re-en. Sec. 5065, R.C.M. 1935; R.C.M. 1947, 11-1111(part).

7-5-4223. En. Ch. 167, L. 1907; Sec. 3274, Rev. C. 1907; re-en. Sec. 5066, R.C.M. 1921; re-en. Sec. 5066, R.C.M. 1935; R.C.M. 1947, 11-1112(part).

7-5-4224 and 7-5-4225. En. Ch. 167, L. 1907; Sec. 3273, Rev. C. 1907; re-en. Sec. 5065, R.C.M. 1921; re-en. Sec. 5065, R.C.M. 1935; R.C.M. 1947, 11-1111(part).

## Part 43

### Municipal Contracts and Franchises

7-5-4301. Power to enter and execute contracts. (1) The city or town council has power to make any and all contracts necessary to carry into effect the powers granted by this code and to provide for the manner of executing the same.

(2) All necessary contracts for professional, technical, engineering, and legal services are excluded from the provisions of 7-5-4302 through 7-5-4304, 7-5-4306, and 7-5-4307.

History: (1)En. Subd. 63, Sec. 5039, R.C.M. 1921; amd. Sec. 1, Ch. 115, L. 1925; amd. Sec. 1, Ch. 20, L. 1927; re-en. Sec. 5039.62, R.C.M. 1935; Sec. 11-965, R.C.M. 1947; (2)En. Sec. 1, Ch. 48, L. 1907; Sec. 3278, Rev. C. 1907; re-en. Sec. 5070, R.C.M. 1921; amd. Sec. 1, Ch. 22, L. 1927; re-en. Sec. 5070, R.C.M. 1935; amd. Sec. 1, Ch. 18, L. 1939; amd. Sec. 1, Ch. 59, L. 1941; amd. Sec. 1, Ch. 153, L. 1947; amd. Sec. 1, Ch. 139, L. 1949; amd. Sec. 1, Ch. 220, L. 1959; amd. Sec. 1, Ch. 26, L. 1963; amd. Sec. 1, Ch. 121, L. 1969; amd. Sec. 1, Ch. 371, L. 1971; Sec. 11-1202, R.C.M. 1947; R.C.M. 1947, 11-965, 11-1202(part).

USE FOR  
H.B. 193

\* 7-5-4302. Competitive, advertised bidding required for certain purchase and construction contracts. (1) Except as provided in 7-5-4303, all contracts for the purchase of any automobile, truck, other vehicle, road machinery, other machinery, apparatus, appliances, or equipment, for any materials or supplies of any kind, or for construction, repair, or maintenance for which must be paid a sum exceeding \$10,000 must be let to the lowest responsible bidder after advertisement for bids.

(2) Such advertisement shall be made in the official newspaper of the city or town if there be such official newspaper, and if not, it shall be made in a daily newspaper of general circulation published in the city or town if there be such and, otherwise, by posting in three of the most public places in the city or town. Such advertisement, if by publication in a newspaper, shall be made once each week for 2 consecutive weeks, and the second publication shall be made not less than 5 days or more than 12 days before the consideration of bids. If such advertisement is made by posting, 15 days must elapse, including the day of posting, between the time of the posting of such advertisement and the day set for considering bids.

(3) The council may postpone action as to any such contract until the next regular meeting after bids are received in response to such advertisement and may reject any and all bids and readvertise as provided herein.

History: En. Sec. 1, Ch. 48, L. 1907; Sec. 3278, Rev. C. 1907; re-en. Sec. 5070, R.C.M. 1921; amd. Sec. 1, Ch. 22, L. 1927; re-en. Sec. 5070, R.C.M. 1935; amd. Sec. 1, Ch. 18, L. 1939; amd. Sec. 1, Ch. 59, L. 1941; amd. Sec. 1, Ch. 153, L. 1947; amd. Sec. 1, Ch. 139, L. 1949; amd. Sec. 1, Ch. 220, L. 1959; amd. Sec. 1, Ch. 26, L. 1963; amd. Sec. 1, Ch. 121, L. 1969; amd. Sec. 1, Ch. 371, L. 1971; R.C.M. 1947, 11-1202(part); amd. Sec. 1, Ch. 429, L. 1981.

#### Compiler's Comments

1981 Amendment: Extended the coverage of the types of contracts to include repair and

maintenance; increased the minimum contract amount requiring bids from \$4,000 to \$10,000 in (1).

\* 7-5-4303. Exemptions from bidding or advertising requirements for certain contracts. (1) The provisions of 7-5-4302 as to advertisement for bids shall not apply upon the happening of any emergency caused by fire, flood, explosion, storm, earthquake, riot, insurrection, or other similar emergency, but in such case the council may proceed in any manner which, in the judgment of three-fourths of the members of the council present at the meeting, duly recorded in the minutes of the proceedings of the council by aye and nay vote, will best meet the emergency and serve the public interest. Such emergency shall be declared and recorded at length in the minutes of the proceedings of the council at the time the vote thereon is taken and recorded.

(2) When there are sufficient funds in the budget for supplies or equipment, a city or town may, without bid, purchase such supplies or equipment from government agencies available to cities or towns when the same can be purchased by such city or town at a substantial saving to such city or town.

History: En. Sec. 1, Ch. 48, L. 1907; Sec. 3278, Rev. C. 1907; re-en. Sec. 5070, R.C.M. 1921; amd. Sec. 1, Ch. 22, L. 1927; re-en. Sec. 5070, R.C.M. 1935; amd. Sec. 1, Ch. 18, L. 1939; amd. Sec. 1, Ch. 59, L. 1941; amd. Sec. 1, Ch. 153, L. 1947; amd. Sec. 1, Ch. 139, L. 1949; amd. Sec. 1, Ch. 220, L. 1959; amd. Sec. 1, Ch. 26, L. 1963; amd. Sec. 1, Ch. 121, L. 1969; amd. Sec. 1, Ch. 371, L. 1971; R.C.M. 1947, 11-1202(part).

\* 7-5-4304. Certain contracts to be submitted to voters. No contract may be let extending over a period of 5 years or more without first submitting the question to a vote of the electors of the city or town.

History: En. Sec. 1, Ch. 48, L. 1907; Sec. 3278, Rev. C. 1907; re-en. Sec. 5070, R.C.M. 1921; amd. Sec. 1, Ch. 22, L. 1927; re-en. Sec. 5070, R.C.M. 1935; amd. Sec. 1, Ch. 18, L. 1939; amd. Sec. 1,

Ch. 59, L. 1941; amd. Sec. 1, Ch. 153, L. 1947; amd. Sec. 1, Ch. 139, L. 1949; amd. Sec. 1, Ch. 220, L. 1959; amd. Sec. 1, Ch. 26, L. 1963; amd. Sec. 1, Ch. 121, L. 1969; amd. Sec. 1, Ch. 371, L. 1971; R.C.M. 1947, 11-1202(part); amd. Sec. 8, Ch. 311, L. 1979.

**7-5-4305. Prohibition on division of contracts to circumvent bidding requirements.** Whenever any law of this state provides a limitation upon the amount of money that a city or town can expend upon any public work or construction project without letting such public work or construction project to contract under competitive bidding procedures, a city or town shall not circumvent such provision by dividing a public work or construction project or quantum of work to be performed thereunder, which by its nature or character is integral to such public work or construction project or serves to accomplish one of the basic purposes or functions thereof, into several contracts or separate work orders or by any similar device.

History: En. Sec. 1, Ch. 183, L. 1971; R.C.M. 1947, 11-1202.1.

**7-5-4306. Use of installment purchase contract.** (1) Subject to the requirements of subsection (2), when the amount to be paid under any such contract shall exceed the amount set forth in 7-5-4302(1), the council may provide for the payment of such an amount in installments extending over a period of not more than 5 years; provided that at the time of entering into such contract, there shall be an unexpended balance of appropriation in the budget for the then-current fiscal year available and sufficient to meet and take care of such portion of the contract price as is payable during the then-current fiscal year and the budget for each following year in which any portion of such purchase price is to be paid shall contain an appropriation for the purpose of paying the same.

(2) When such amount is extended over a term of 2 years, at least 40% thereof shall be paid the first year and the remainder the second year. When such amount is extended over a term of 3 years, at least one-third thereof shall be paid each year. If such amount is extended over a term of 4 years, at least one-fourth is to be paid each year. If such amount is extended over a term of 5 years, at least one-fifth is to be paid each year.

History: En. Sec. 1, Ch. 48, L. 1907; Sec. 3278, Rev. C. 1907; re-en. Sec. 5070, R.C.M. 1921; amd. Sec. 1, Ch. 22, L. 1927; re-en. Sec. 5070, R.C.M. 1935; amd. Sec. 1, Ch. 18, L. 1939; amd. Sec. 1, Ch. 59, L. 1941; amd. Sec. 1, Ch. 153, L. 1947; amd. Sec. 1, Ch. 139, L. 1949; amd. Sec. 1, Ch. 220, L. 1959; amd. Sec. 1, Ch. 26, L. 1963; amd. Sec. 1, Ch. 121, L. 1969; amd. Sec. 1, Ch. 371, L. 1971; R.C.M. 1947, 11-1202(part); amd. Sec. 2, Ch. 429, L. 1981.

#### Compiler's Comments

**1981 Amendment:** Substituted a reference to 7-5-4302(1) for a \$4,000 amount at which contract payments may be made in installments.

**7-5-4307. Sale or trade-in of old supplies or equipment.** Old supplies or equipment may be sold by the city or town to the highest responsible bidder after calling for bid purchasers as herein set forth for bid sellers, and such city or town may trade in supplies or old equipment on new supplies or equipment at such bid price as will result in the lowest net price.

History: En. Sec. 1, Ch. 48, L. 1907; Sec. 3278, Rev. C. 1907; re-en. Sec. 5070, R.C.M. 1921; amd. Sec. 1, Ch. 22, L. 1927; re-en. Sec. 5070, R.C.M. 1935; amd. Sec. 1, Ch. 18, L. 1939; amd. Sec. 1, Ch. 59, L. 1941; amd. Sec. 1, Ch. 153, L. 1947; amd. Sec. 1, Ch. 139, L. 1949; amd. Sec. 1, Ch. 220,



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for H.B. 1

1. Executive. The term "employee employed in a bona fide executive...capacity..." in M.A.C., Section 24-3.14BII(2)-S1420 means any employee:
  - (a) Whose primary duty consists of the management of the enterprise in which he is employed or of a customarily recognized department of a subdivision thereof; and
  - (b) Who customarily and regularly directs the work of two or more other employees therein; and
  - (c) Who has the authority to hire or fire other employees or whose suggestions and recommendations as to the hiring and firing or as to the advancement and promotion or any other change in status of other employees will be given particular weight; and
  - (d) Who customarily and regularly exercises discretionary powers; and
  - (e) Who does not devote more than 20 percent or, in the case of an employee of a retail or service establishment, who does not devote as much as 40 percent of his hours or work in a workweek to activities which are not directly and closely related to the performance of the work described in subsection (a) through (d) of this section: Provided that this paragraph shall not apply in the case of an employee who is in sole charge of an independent establishment or a physically separated branch establishment; and
  - (f) Who is compensated for his services on a salary basis at a rate of not less than \$150 per week...exclusive of board, lodging, or other facilities. Provided that an employee who is compensated on a salary basis at a rate of not less than \$200 per week...exclusive of board, lodging or other facilities, and whose primary duty consists of the management of the enterprise in which he is employed or of a customarily recognized department or subdivision thereof, and includes a customary and regular direction of the work of two or more employees therein, shall be deemed to meet all of the requirements of this section. This subsection (1)(f) shall not apply to employees whose salary or wages are fixed by legislative action.
2. Administrative. (1) The term "employee employed in a bona fide...administrative...capacity..." in M.A.C., Section 24-3.14BII(2)-S1430 means any employee:

Whose primary duty consists of:

The performance of office or non-manual work directly related to management policies or general business operations of his employer or his employer's customers...

- (2) Who customarily and regularly exercises discretion and independent judgment; and
- (3) (a) Who regularly and directly assists a proprietor, or an employee employed in a bona fide executive or administrative capacity...or
  - (b) Who performs under only general supervision work along specialized or technical lines requiring special training, experience, or knowledge, or
  - (c) Who executes under only general supervision special assignments and tasks; and
- (4) Who does not devote more than 20 percent, or, in the case of an employee of a retail or service establishment, who does not devote as much as 40 percent, of his hours worked in the workweek to activities which are not directly and closely related to the performance of the work described in paragraph (1) of this section; and
- (5) Who is compensated for his services on a salary or fee basis at a rate of not less than \$150 per week...exclusive of board, lodging, or other facilities, or

Provided, that an employee who is compensated on a salary or fee basis at a rate of not less than \$200 per week, exclusive of board, lodging, or other facilities, and whose primary duty consists of the performance of work described in paragraph (1) of this section, which includes work requiring the exercise of discretion and independent judgment, shall be deemed to meet all of the requirements of this section. This subsection (5) shall not apply to employees whose salary or wages are fixed by legislative action.

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X 3. Professional. (1) The term "employee employed in a bona fide... professional capacity..." in M.A.C., Section 24-3.14BII(2)-S1440 means any employee:

- (a) Whose primary duty consists of the performance of:
  - (i) Work requiring knowledge of an advanced type in a field of science or learning customarily acquired by a prolonged course of specialized intellectual instruction and study, as distinguished from a general academic education and from an apprenticeship, and from training in the performance of routine mental, manual, or physical processes; or
  - (ii) Work that is original and creative in character in a recognized field of artistic endeavor (as opposed to work which can be produced by a person endowed with a general manual or intellectual ability and training), and the result of which depends primarily on the invention, imagination, or talent of the employee; or

(b) Whose work requires consistent exercise of discretion and judgment in its performance; and

(c) Whose work is predominantly intellectual and varied in character (as opposed to routine mental, manual, mechanical, or physical work) and is of such character that the output produced or the result accomplished cannot be standardized in relation to a given period of time; and

(d) Who does not devote more than 20 percent of his hours worked in a workweek to activities which are not an essential part of the necessarily incident to the work described in paragraphs (a) through (c) of this section; and

(e) Who is compensated for his services on a salary or fee basis at a rate of not less than \$150 per week...exclusive of board, lodging, or other facilities. Provided that this paragraph shall not apply in the case of an employee who is the holder of a valid license or certificate permitting the practice of law or medicine or any of their branches and who is actually engaged in the practice thereof...and provided further in that an employee who is compensated on a salary or fee basis at a rate of not less than \$200 per week...exclusive of board, lodging, or other facilities, and whose primary duty consists of the performance either of work described in paragraph (1) of this section, which includes work requiring the consistent exercise of discretion and judgment or of work requiring invention, imagination, or talent in a recognized field of artistic endeavor, shall be deemed to meet all of the requirements of this section. This subsection (1)(e) shall not apply to employees whose salary or wages are fixed by legislative action.

This compensatory time and overtime pay policy shall apply to all full-time employees or part-time employees if their workday exceeds eight (8) hours. These employees may be permanent, temporary, or seasonal employees.

This policy shall be utilized unless it conflicts with negotiated labor contract provisions, which shall take precedence to the extent applicable.

Any questions concerning this policy should be directed to the Personnel Division of the Department of Administration, phone 449-3871.